

No. 10393

United States
Circuit Court of Appeals
For the Ninth Circuit.

Vol
2365

KENNETH BENJAMIN EDWARDS,
Appellant,
vs.
UNITED STATES OF AMERICA,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

SEP 24 1943

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

A. L. WIRIN

257 S. Spring St.
Los Angeles, Calif.

For Appellee:

CHARLES H. CARR,

United States Attorney

BETTY MARSHALL GRAYDON,

Assistant United States Attorney
600 U. S. Post Office and Court House Bldg.
Los Angeles, Calif. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

United States District Court, Southern District of
California, Central Division.

No. 15800

THE UNITED STATES OF AMERICA

vs.

KENNETH BENJAMIN EDWARDS

INDICTMENT

(Viol.: 50 U.S.C. App. 311)

No. 15800

Filed 1-20-43

Viol.: United States Code, Appendix, Title 50,
Section 311.

In the District Court of the United States in and
for the Southern District of California, Cen-
tral Division, September, 1942 Term

In the Name and by the Authority of the United
States of America, the Grand Jury for the Southern
District of California, at Los Angeles, presents on
oath in open court:

That

KENNETH BENJAMIN EDWARDS,

hereinafter called the defendant, is a male person
within the class made subject to selective service
under the Selective Service Act of 1940, as amended;

that defendant registered as required by the Selective Training and Service Act of 1940 and the rules and regulations promulgated thereunder and became a registrant of Local Board No. 170, said board being then and there duly created and acting under the Selective Service System established by said Act in the County of Orange, State of California, in the division and district aforesaid; that pursuant to the terms and provisions of said Act, and the rules and regulations promulgated thereunder, the said defendant was classified by said local board in Class 4-E and was subsequently notified of said classification by said board and a notice and order by said board was thereafter duly given to said defendant to report for work of national importance in lieu of induction into the armed forces of the United States of America on June 1, 1942, at Orange, California, within the district and division aforesaid; that said defendant did at said time and place knowingly, wilfully, unlawfully and feloniously fail and neglect to perform a duty required of him under said Act and the rules and regulations promulgated thereunder, that is to say the defendant did then and there knowingly, wilfully, unlawfully and feloniously fail to report for work of national importance in lieu of induction into the armed forces of the United States as so notified and ordered to do;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

LEO V. SILVERSTEIN

United States Attorney [2]

A true bill,

ROY D. BAYLY

Foreman.

Bail, \$1000.

[Endorsed]: Filed Jan. 20, 1943. [3]

At a stated term, to wit: The February Term, A. D. 1943 of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 1st day of February in the year of our Lord one thousand nine hundred and forty-three.

Present:

The Honorable: Leon R. Yankwich, District Judge.

No. 15,800—Crim.

[Title of Cause.]

PLEA OF NOT GUILTY

This cause coming on for arraignment and plea of the defendant Kenneth Benjamin Edwards; H. P. Bledsoe, Esq., Assistant U. S. Attorney, appear-

ing for the Government; Samuel Goldstein, Court Reporter, being present and reporting the proceedings; A. L. Wirin, Esq., appearing as counsel for the defendant; the defendant being present in Court on bond, now states his true name to be as charged in the Indictment, waives the reading of the Indictment, and pleads not guilty to the charges contained in the Indictment; it is ordered that this cause be, and it hereby is, set for trial on March 2, 1943.

MB 31/794 [4]

[Title of District Court and Cause.]

VERDICT

We the jury in the above entitled cause find the defendant Kenneth Benjamin Edwards guilty as charged in the indictment.

Los Angeles, California, March 3, 1943.

S. ALLEN GREER

Foreman of the Jury.

[Endorsed]: Filed Mar 3 1943. [5]

District Court of the United States, Southern District of California, Central Division

UNITED STATES

v.

KENNETH BENJAMIN EDWARDS

No. 15800. Criminal indictment in 1 counts for violation of U.S.C., Title 50, Secs. 311.

JUDGMENT AND COMMITMENT

On this 15th day of March 1943, came the United States Attorney, and the defendant Kenneth Benjamin Edwards appearing in proper person, and with counsel and,

The defendant having been convicted on verdict of the jury of the offense charged in the indictment in the above-entitled cause, to wit on June 1 1942 at Orange, California, defendant failed to report for work of national importance in lieu of induction into the armed forces of the United States as so notified and ordered to do.

and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the jail type to

be designated by the Attorney General or his authorized representative for the period of one year.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) LEON R. YANKWICH

United States District Judge.

[Endorsed]: Filed this 15th day of March 1943.

[6]

[Title of District Court and Cause.]

NOTICE OF APPEAL

Name and address of Appellant: Kenneth Benjamin Edwards, Route 1, Box 477 B, Orange, California.

Name and address of Appellant's attorneys: A. L. Wirin, 257 South Spring Street, Los Angeles, California.

Offense: Violation of Selective Training and Service Act of 1940.

Date of Judgment: March 15, 1943.

Brief discription of judgment or sentence: Imprisonment of one year in a prison of a penitentiary type.

Name of prison where now confined: Los Angeles County Jail.

I, the above-named Appellant, hereby appeal to the United States Circuit Court of Appeals for the

Ninth Circuit from the judgment above mentioned on the grounds set forth below.

Dated: March 16, 1943.

KENNETH B. EDWARDS

Appellant. [7]

GROUND OF APPEAL:

1. The Court erred in refusing to grant defendant's requested instructions as excepted to.

2. The Court erred in giving instructions submitted by the prosecution as excepted to by defendant.

3. The Court erred in ruling upon evidence and rejection of proffered exhibits by defendant and rejecting defendant's offers of proof, as excepted to by defendant.

4. The evidence was insufficient to justify a conviction.

5. The judgment abridges the petitioner's liberty without due process of law.

A. L. WIRIN

Attorney for Appellant.

[Endorsed]: Filed Mar 16, 1943. [8]

[Title of District Court and Cause.]

ORDER ALLOWING RELEASE ON BAIL, ON APPEAL

The defendant having filed a notice of appeal to the Ninth Circuit Court of Appeals, and good cause

appearing therefor, it is hereby ordered that the defendant may be released upon bail, on appeal, in the sum of \$1000.

Dated: At Los Angeles, this 16th day of March, 1943.

LEON R. YANKWICH

United States District Judge.

[Endorsed]: Filed Mar. 16, 1943. [9]

[Title of District Court and Cause.]

BAIL BOND ON APPEAL

Know All Men by These Presents:

That we, Kenneth Benjamin Edwards, of the County of Los Angeles, as principal and Floyd E. Edwards, Louise Edwards, and Evelyn M. Trueblood, all of Orange County, California, as sureties, are held and firmly bound unto the United States of America, in the sum of One Thousand Dollars, to the payment of which, well and truly to be made, we jointly and severly bind ourselves, our heirs, executors, administrators and assigns, firmly by these presents.

Witness our hands and seals at Los Angeles, in said District, this 16th day of March, 1943.

The conditions of the above obligation *is* such that,

Whereas, lately, to wit, on the 15th day of March, 1943, at a term of the District Court of the United States, in and for the Southern District of Cali-

fornia, Central Division, in an action pending in the said court in which the United States of America [10] was plaintiff and Kenneth Benjamin Edwards was defendant, a judgment and sentence was made, given, rendered and entered against the said Kenneth Benjamin Edwards, in the above entitled action, wherein he was convicted as charged of violation of the Selective Training and Service Act of 1940;

Whereas, in said judgment and sentence so made, given, rendered and entered against the said Kenneth Benjamin Edwards, he was by said judgment sentenced to imprisonment for a period of one year in an institution of a penitentiary type;

Whereas, the said Kenneth Benjamin Edwards has been admitted to bail pending the decision upon said appeal, in the sum of One Thousand (\$1,000.00) Dollars.

Now, Therefore, the conditions of this obligation are such that if said Kenneth Benjamin Edwards shall appear in person, or by his attorney, in the United States Circuit Court of Appeals for the Ninth Circuit on such day or days as may be appointed for the hearing of said cause in said Court and prosecute his appeal; and if the said Kenneth Benjamin Edwards shall abide by and obey all court orders made by the said United States Circuit Court of Appeals for the Ninth Circuit, and if the said Kenneth Benjamin Edwards shall surrender himself in execution of said judgment and sentence, if the said judgment and sentence be affirmed by the said United States Circuit Court of Appeals

for the Ninth Circuit; and if the said Kenneth Benjamin Edwards will appear for trial in the District Court of the United States, in and for the Southern District of California, Central Division, on such day or days as may be appointed for re-trial by said District Court, and if the said judgment and sentence against him be reversed, then this obligation shall be null and void; otherwise to remain in full force and effect.

This Recognizance shall be deemed and construed to contain the "express agreement", summary judgment and execution thereon, mentioned in Rule 13 of the District Court. [11]

KENNETH BENJAMIN

EDWARDS

Principal

R. D. #1, Box 478-A

Orange, Calif.

Address

LOYD E. EDWARDS

R. D. 1, Box 477B

Orange, California

Address

LOUISE EDWARDS

R. D. 1, Box 477B,

Orange, Calif.

Address

EVELYN M. TRUEBLOOD

R. D. #1, Box 478-A,

Orange, Calif.

Address

Approved as to form

LEO V. SILVERSTEIN

U. S. Attorney

By: HOWARD T. CALVERLEY,

Asst. U. S. Attorney

I hereby certify that I have examined the within bond and that in my opinion the form hereof is correct, and sureties thereon are qualified.

A. L. WIRIN

Attorney for Defendant and
Appellant.

ORDER

The foregoing bond is approved this 16th day of March, 1943.

LEON R. YANKWICH

United States District Judge.

[12]

United States of America,
Southern District of California

Loyd E. Edwards, Louise Edwards of Orange County, Calif. and Evelyn M. Trueblood of Orange County, Calif. each being duly sworn, deposes and says:

That each is a householder in the District aforesaid, and is worth the sum of One Thousand Dollars, over and above all debts and liabilities, exclusive of property exempt from execution, and is the owner of the property listed below under Schedule of Assets, which schedule is made a part of this affidavit; that the said property is not encumbered

except as below listed and that the property is reasonably of the value below listed, and further that he is not receiving or accepting compensation for acting as surety herein and is not surety upon any outstanding penal bonds except as disclosed in the schedule below.

(A) LOYD E. EDWARDS (Seal)

LOUISE EDWARDS (Seal)

(B) EVELYN M. TRUEBLOOD

(Seal)

Subscribed and sworn to before me this 16th day of March 1943.

B. B. HANSEN

United States Commissioner for the Southern District of California

SCHEDULE OF ASSETS

Sureties "A"

Tract No. 918 N2 AC Lot 34 5 AC in 35 and 5 AC in 38, Orange County, California N.W. $\frac{1}{4}$, Sec. 25 TWP 4 R9, no encumbrances, valued at \$20,000.

Surety "B"

4.68 AC In N.W. $\frac{1}{4}$ Sec. 25 TWP 4 R9, Tract 918, Orange County, California. No encumbrance—valued at \$5,000.

[Endorsed]: Filed Mar. 16, 1943. [13]

[Title of District Court and Cause.]

STIPULATION re EXHIBITS

It is hereby stipulated that the original Exhibits introduced into evidence or marked for identification may be transmitted to the Appellate Court.

Dated this 12 day of July, 1943.

CHARLES H. CARR

United States Attorney

By BETTY MARSHAL GRAY-
DON

Assistant United States At-
torney

A. L. WIRIN

Atty. for defendant

It is so ordered.

LEON R. YANKWICH

Judge

Received copy of the within stipulation, July 12,
1943.

BETTY MARSHAL GRAY-
DON

Assistant U. S. Atty.

[Endorsed]: Filed Jul 12 1943. [14]

[Title of District Court and Cause.]

STIPULATION AND ORDER

It Is Stipulated that the appellant may have to and including June 15, 1943, within which to have settled and filed bill of exceptions herein.

Dated this 7 day of April, 1943.

A. L. WIRIN

Attorney for Appellant

LEO V. SILVERSTEIN

United States Attorney

By BETTY MARSHALL

GRAYDON

Assistant United States At-
torney,

Attorneys for Appellee

ORDER

Good cause appearing therefor, and based upon the foregoing stipulation, [15]

It Is Ordered that the appellant may have to and including June 15, 1943, within which to have settled and filed bill of exceptions herein.

Dated this 7 day of April, 1943.

LEON R. YANKWICH

Judge.

[Endorsed]: Filed April 7, 1943. [16]

[Title of District Court and Cause.]

THE STATEMENT OF POINTS AND DESIGNATION OF PARTS OF THE RECORD AND STIPULATION

Appellant states that he intends to rely on all the points set out in his assignment of errors.

The appellant hereby designates the following documents to be included in the printed transcript of the record:

1. Indictment
2. Arraignment and Plea
3. Verdict
4. Judgment and Sentence
5. Notice of Appeal
6. Order extending time to settle and file Bill of Exceptions
7. Bill of Exceptions
8. Assignment of Errors
9. Stipulation that Exhibits may be transmitted to the Appellate Court.

A. L. WIRIN

Attorney for Defendant [17]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated that the foregoing Statement of Points and Designation of Parts of the Record include all documents to be included in the printed transcript of the record.

Dated this 12 day of July, 1943.

CHARLES H. CARR

United States Attorney

By BETTY MARSHALL

GRAYDON

Assistant United States At-
torney

Received copy of the within Statement and Stipulation July 12, 1943.

BETTY MARSHAL

GRAYDON

Asst. U. S. Attorney

[Endorsed]: Filed July 12, 1943. [18]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 18 inclusive contain full, true and correct copies of: Indictment; Minute Order entered February 1, 1943; Verdict; Judgment and Commitment; Notice of Appeal; Order Allowing Release on Bail on Appeal; Bail Bond on Appeal; Stipulation and Order for Transmission of Original Exhibits; Stipulation and Order Extending Time to Settle and File Bill of Exceptions and Statement of Points and Designation of Parts of the Record and Stipulation which, together with the Original Bill of Exceptions, Original Assignment of Errors and Original Exhibits transmitted herewith constitute the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for comparing, correcting and certifying the foregoing record amount to \$4.60 which sum has been paid to me by Appellant.

Witness my hand and the seal of said District Court this 24 day of July, 1943.

[Seal] EDMUND L. SMITH, Clerk

By THEODORE HOCKE

Deputy Clerk.

At a Stated Term, to wit: The October Term 1943 of the United States Circuit Court of Appeals for the Ninth Circuit, held in the Court Room thereof, in the City and County of San Francisco, in the State of California, on Monday the fourteenth day of June in the year of our Lord one thousand nine hundred and forty-three.

Present:

Honorable Curtis D. Wilbur, Senior Circuit Judge, Presiding,

Honorable Francis A. Garrecht, Circuit Judge,

Honorable William Healy, Circuit Judge.

No. 10393

KENNETH BENJAMIN EDWARDS,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

ORDER EXTENDING TIME TO SETTLE AND
FILE BILL OF EXCEPTIONS

Upon consideration of the stipulation of counsel for respective parties, and affidavit of Mr. A. L.

Wirin in support thereof, filed June 14, 1943, and good cause therefor appearing, it is Ordered that the time within which appellant may settle and file his bill of exceptions in this cause be, and hereby is extended to and including July 15, 1943.

I hereby certify that the foregoing is a full, true, and correct copy of an original Order made and entered in the within-entitled cause.

Attest my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 14th day of June, 1943.

(Seal) PAUL P. O'BRIEN,
Clerk, U. S. Circuit Court of Appeals for the Ninth
Circuit.

[Endorsed]: Filed Jun 15 1943.

In the United States District Court, Southern District of California, Central Division

No. 15800 Criminal

UNITED STATES OF AMERICA,
Plaintiff,

vs.

KENNETH BENJAMIN EDWARDS,
Defendant.

BILL OF EXCEPTIONS

Be it remembered that the above entitled case came on for trial on March 2, 1943, before the

Hon. Leon R. Yankwich presiding in Courtroom No. 5, of the District Court of the United States, for the Southern District of California, Central Division, sitting with a jury.

The United States of America, Plaintiff, appeared by Leo V. Silverstein, United States Attorney, and Betty Marshall Graydon, Assistant United States Attorney, and the Defendant was represented by A. L. Wirin. The following proceedings were had and the following evidence both oral testimony and by stipulation was received, to-wit:

IDA K. LEHR,

called for the Government, testified that the defendant was classified "1B" on October 17, 1941, and appealed the classification. The Appeal Board reclassified defendant "4E" on February 16, 1942. That defendant was directed to appear at the Local Board #170 on June 1, 1942, at 4:30 P. M. to be examined and to be instructed as to his duties. That he had been assigned to the Civilian Public Service Camp. Defendant appeared on that day and refused to go to camp. That he was thereafter notified again to report to the Board but did not do so and has never reported to camp. The defendant in his questionnaire and in his letters claimed he should be classified "4D" on the grounds he was an ordained minister of Jehovah's Witnesses. In his questionnaire he admitted working on his father's farm for his living and spending as much time as possible performing services

(Testimony of Ida K. Lehr.)

in various capacities as a member of Jehovah's Witnesses. Affidavits had been filed with the Board stating that the defendant was an ordained minister of Jehovah's Witnesses. Defendant filed with his questionnaire the special form for Conscientious Objectors, Form 47.

The Local Board had information, through a letter dated October 22, 1941, that defendant was not listed in the official certified list of Jehovah's Witnesses.

Outside the presence of the jury, the Court stated that he would not permit the question to go to the jury as to whether the Local Board acted arbitrarily.

Defendant offered in evidence a document dated June 25, 1942, which was refused admission into evidence by the Court upon objection by the Government that it is dated after defendant's classification. This document was subsequently marked defendant's Exhibit I for identification. [2*]

In the examination of

CHARLES W. GRIFFITH,

the following occurred: He testified that he was a special agent of the Federal Bureau of Investigation and that defendant signed a statement in writing voluntarily.** In this statement defendant admitted that he had refused to report to any camp on the ground that he was an ordained min-

*Page numbering appearing at foot of page of original Bill of Exceptions.

**This document was introduced as Exhibit 9.

ister. Upon the conclusion of the testimony of Charles W. Griffith, the Government rested.

Defendant called

KENNETH B. EDWARDS,

the defendant, as a witness. He testified that in the past year he averaged 150 hours a month preaching the Gospel as a minister of Jehovah's Witnesses. That he has also served in the capacity as back-call servant. That he is at present a "pioneer" and devotes his full time to preaching the Gospel. That he has been a "pioneer" for almost a year having become a "pioneer" in March of the preceding year. That he became a member and minister of Jehovah's Witnesses in 1938. That from 1938 to 1939 he worked on his father's farm part time. That in 1940 he was working 32 hours a week on the farm and was preaching 10 hours a week; that in 1941 he was preaching about 15 hours a week and was working on the farm about 28 hours a week; that in 1942 he devoted 36 hours to preaching per week and during the last part of 1942 he was devoting all of his time to preaching. That he had always planned on devoting full time to Jehovah's Witnesses and went into the pioneer work when he felt he owed no more obligation to his father. That on March 25, 1942, he sent a letter to the Local Board, a copy of which was introduced in evidence as defendant's Exhibit "D". This is a letter of defendant in which he states that he was appointed a "pioneer" by the

(Testimony of Kenneth B. Edwards.)

Watch Tower Bible and Tract Society, Inc. on March 5, 1942, and that he was devoting his full time as a minister of Jehovah's Witnesses and that his name would soon be added to the certified list of Pioneers on [3] file with the National and State Headquarters of the Selective Service System. It further states that he was entitled to a "4D" classification. The witness stated that he did not receive a reply from the Board to that letter. A letter of defendant dated May 25, 1942, defendant's Exhibit "F", was admitted into evidence. In this letter, defendant stated that as he informed the Board in his letter of March 25, 1942, he was a full time ordained minister of Jehovah's Witnesses and that he asked the Board to defer final action on his case until National Headquarters Selective Service had an opportunity to rule on his case. Exhibit "E" was received in evidence and is a document directed to State Headquarters of Selective Service and a copy of which was enclosed with Exhibit "F", and defendant therein states he was appointed a full time "pioneer" by the Watch Tower Bible and Tract Society, Inc. on March 5, 1943, and that he has been devoting, as such "pioneer", 150 hours in said Service per month besides service in other capacities. That he devotes his full time to the Lord's work. He requested an appeal to avoid an injustice. A letter from the Local Board dated May 29, 1942, was received in evidence as Exhibit "G". This letter states that the Board never re-

(Testimony of Kenneth B. Edwards.)

ceived defendant's letter of March 25, 1942, and that defendant took his case out of the hands of the Board when he appealed to the Board of Appeals. Defendant admitted that he appeared at the office of the Local Board on June 1, 1942, and refused to go to camp on the grounds that his work as a minister of Jehovah's Witnesses would not permit him to do so; he testified that he did not intend to commit a felony when he refused to go to camp but intended to obey God's law; that he did not believe the order was lawful or valid.

On cross-examination defendant stated that he did not rely upon earthly ordination to make him an ordained minister and that he did not follow a course of study in a theological school. That he was not a full time minister when he filed his questionnaire; [4] the following testimony was then given:

Q. By Mrs. Graydon: Did you read the order of induction for Work of National Importance when you received it? A. Yes.

Q. And you also read the Notice of Suspected Delinquency? A. Yes, I did.

Q. And you read the statement that failure to report on or about the day and hour prescribed is an offense punishable by fine or imprisonment, or both? A. Yes, and I so reported.

Q. Did you also know that it was an offense not to obey an induction order, as stated on your

(Testimony of Kenneth B. Edwards.)

order, for work, that wilful failure to report directly to your own local Board at the hour and on the day named in the notice is a violation of the Selective Training and Service Act of 1940 and subjects you to a fine and imprisonment?

A. Yes, and so I reported as designated there, at the time.

Q. But you did not report for Work of National Importance?

The Court: (Interposing) You reported to them that you were not going? A. Yes.

Q. By Mrs. Graydon: Well, now that you have come to court and found through the experience you passed through, since you did not report for induction, you do know now that it is a violation of the law, do you not?

A. Yes, a violation of the order which I do not believe was properly enacted.

Q. By Mrs. Graydon: Are you still of the same frame of mind? A. Yes, I am.

On re-direct examination, defendant stated that he never asked [5] for a classification of "4E", but always asked the classification of "4D".

On re-cross-examination, Mrs. Graydon asked the following question "Do you think that you did not have a fair hearing?" The Court refused to permit the question on its own initiative in the following language "I'm not going to permit that question to be answered. I am not going to have the jury pass on the question of whether it is a

(Testimony of Kenneth B. Edwards.)
fair hearing. That is not their province. The only thing they have to determine is whether there was a violation and if it was willful.”

MRS. LOUISE EDWARDS

was examined as a witness on behalf of the defendant. She testified that she was the mother of the defendant. That she has been a member of Jehovah's Witnesses for a long time. That defendant became a “pioneer” in March, 1942.

DWIGHT T. KENYON

was called as a witness by defendant. He stated that he was a member of Jehovah's Witnesses. That defendant has been a member of Jehovah's Witnesses since 1934, and has held his religious views since that time.

VICTOR OCHSNER

was called as a witness by defendant. He stated that he had a conversation with M. B. Wellington, chairman of the Local Draft Board, in which Mr. Wellington spoke of Jehovah's Witnesses and stated that “I think the organization is rotten. It stinks. The whole organization stinks. It is a

(Testimony of Victor Ochsner.)

disgrace to Christianity. I have no use for it at all." Upon objection by Mrs. Graydon, the Court struck the question and answer as immaterial and not impeachment and further that the conversation had nothing to do with this particular classification. The following testimony was then given:

The Court: By the way, the conversation had nothing to do with any discussion about this Edwards case, or any other case?

The Witness: No, it was a general conversation. [6]

Mrs. Graydon: I object to it, your Honor.

The Court: Well, you didn't object to it at the beginning. I will strike the question and answer as immaterial, it is not impeachment, Mr. Wellington hasn't testified as a witness and furthermore this is a conversation which had nothing to do with this particular classification.

Mr. Wirin: May I ask a question that does have to do with it?

The Court: We are not trying the mental attitude of this man because the man wasn't before the Court as a witness. If he had been before the Court and testified you could ask questions that would impeach him.

Mr. Wirin: We take an exception to the Court, on its own motion, striking the answer.

The Court: The motion has been made. I didn't rule on it, you followed it up so fast I didn't have time to rule on it. I have a right to ask to strike questions and answers on my own motion. After all, I can object myself if the United States

(Testimony of Victor Ochsner.)

Attorney doesn't protect me. I don't allow such questions and if the United States Attorney doesn't protect and is asleep at the switch I can object.

Mr. Wirin requested the Court if he could ask a question that had to do with this particular classification. The Court answered "We are not trying the mental attitude of this man because the man wasn't before the Court as a witness. If he had been before the Court and testified you could ask questions that would impeach him." Mr. Wirin thereupon took exception to the Court, striking the answer. The Court thereupon instructed the jury to disregard the question and answer. Mr. Wirin then stated "What, if anything, was said during the course of the conversation concerning persons who [7] were members of Jehovah's Witnesses having claimed exemption before the Draft Board of which Mr. Wellington was a member?" Mrs. Graydon objected that it was incompetent, irrelevant, and immaterial. The Court sustained the objection. Mr. Wirin asked if he could make an offer of proof that the conversation pertained to the ministers of Jehovah's Witnesses, but Court then stated that he would sustain an objection to the offer of proof and told the jury to disregard it.

Mr. Wirin then stated he would call Richard Ochsner. The Court then stated "If you are going to ask the same questions, I won't allow the same questions to be asked. I have ruled on it and I will not allow those questions to be gone into."

RICHARD J. OCHSNER

was called as a witness for defendant. Mr. Wirin made an offer of proof that this witness would testify substantially as did Victor Ochsner. The Court then stated it would sustain the objection to the offer of proof and ordered the jury to disregard it on the ground it was not material with the issue involved in this case.

FLOYD BUMPURY

was called as a witness by defendant. Mr. Wirin made an offer of proof to prove by this witness and also by C. W. Council, who was in Court, that there was a conversation of October 16, 1942, in the course of which Mr. Rodieck, a member of the Draft Board involved in this proceeding, expressed himself as hostile and antagonistic to Jehovah's Witnesses. The Court sustained the objection to an offer of proof on the ground that it was immaterial to the issue and could not impeach any particular member of the Board because such member was not a witness in this case. Mr. Wirin further stated that the prejudice, which these witnesses expressed, afterwards had roots in the minds of the other members of the Board.

After the jury was excused, Mr. Wirin made a motion for a directed verdict. The motion was denied and exception was granted to defendant. [8]

The Court then instructed the jury.

Mr. Wirin excepted to the court's refusal to give the requested instructions Numbers 7 to 30 inclusive. Mr. Wirin also excepted to instructions requested by the prosecution and given by the Court, 3, 4, 5, 6, and 7. The exceptions were noted by the Court.

The following is Instruction Number 7 as requested by the defendant:

"You are instructed that although under the Act, the decision as to what classification a particular registrant is to receive is left to the local board, this does not mean that a court of law does not have the power nor that you as a jury do not have the power to review a classification.

This review is limited, however, to a determination by the jury of the facts, subject to the limitations to be indicated by the Court in later instructions, that constitute arbitrariness or capriciousness, denial by the draft board of a fair hearing, or violation by the draft board of the provisions of the Selective Training and Service Act, or the Rules and Regulations adopted pursuant to that Act."

The following are instructions 8 to 30 inclusive as requested by defendant and which were not given by the Court:

8. Arbitrary power and the rule of the United States Constitution requiring the principle of fair play (legally known as "due process") cannot both exist at the same time. They are antagonist and incompatible forces. Of necessity arbitrary power must perish before the rule of the Constitution.

There is no place in our constitutional system of government (and this includes the administration of the Selective Service System) for the exercise of arbitrary power.

9. You are instructed that Local and Appeal Boards under [9] the Selective Service System must not act in an arbitrary or capricious manner. Classifications by such boards must be based upon the evidence before them and that evidence alone.

If you find that the local and appeal boards in this case acted in an arbitrary or capricious manner or disregarded the evidence that was before them or failed to give the registrant, defendant here, a full and fair hearing, you will acquit the defendant and find him not guilty.

10. You are further instructed more particularly that if the order of the local or appeals boards in classifying the defendant was made arbitrarily or capriciously, or was the result of passion or prejudice; or was made in disregard of the evidence presented to it, or if there was not substantial evidence to sustain the finding of the local board; or if the defendant was denied any hearing at all; or was denied a full and fair hearing, the order of the local or appeal board in ordering the defendant to report for induction into the armed forces was an illegal order since it was made as a result of the deprivation of the defendant of his rights of due process of law.

It is for the jury to determine the facts as whether any of the above took place in the case of the defendant.

11. If you find that the local board acted arbitrarily or capriciously in classifying the defendant as it did, you will find the defendant not guilty.

12. If you find that the decision of the local or appeal board was arrived at because of passion or prejudice [10] against the Defendant or against Jehovah's Witnesses, you will find the Defendant not guilty.

13. If you find that there was not substantial evidence before the boards to sustain the finding that Defendant should be classified as he was, you will find the Defendant not guilty.

By substantial evidence is meant a large quantum of evidence. It does not mean an absence of evidence and it means more than just a scintilla or some evidence. It means that there must be enough evidence before the boards so that a reasonable man in the same circumstances as presented in this case would come to the same conclusion as the boards did. If there was not enough of such evidence before the local or appeal board, you must acquit the Defendant.

14. If you find that the local or appeal board disregarded the evidence presented on behalf of the Defendant, you will find the Defendant not guilty.

15. The denial of a full and fair hearing is the same thing as the denial of any hearing. Therefore, if you find that although the Defendant was granted a hearing, if that hearing was not a full and fair one but was merely perfunctory and was not in accord with the ordinary rules of decency

and fair play, or not in accord with the Selective Service System Rules and Regulations, you will find the Defendant not guilty.

16. If you find that the Defendant was not granted any hearing before the local board although he requested one, you must find the Defendant not guilty.

17. Under the Selective Training and Service Act and its Rules and Regulations, a registrant is given a right of appeal from a classification of a local draft board, [11] to an appeals board.

This right may not be arbitrarily or capriciously taken away from a registrant.

18. The Selective Training and Service Act of 1940 and the regulations promulgated pursuant thereto provide that ministers of religion are exempt from training and service under the Act.

19. Under the Act there are two kinds of ministers of religions regular ministers of religion and duly ordained ministers of religion.

A regular minister of religion is a man who customarily preaches and teaches the principles of religion of a recognized church, religious sect, or religious organization of which he is a member, without having been formally ordained as a minister of religion; and who is recognized by such church, sect, or organization as a minister.

A duly ordained minister of religion is a man who has been ordained in accordance with the ceremonial ritual or discipline of a recognized church, religious sect, or religious organization, to teach and preach its doctrines and to administer its rites

and ceremonies in public worship; and who customarily performs these duties.

20. The rule that ministers of religion are exempt from training and service under the act means that if a person is a minister of religion, an order by his local board to report for induction into the armed forces of the United States is of no force or effect. This is so because a local board has no jurisdiction to order a minister of religion to report for service in the armed forces. [12]

21. The Jehovah's Witnesses constitute a recognized religious organization within the meaning of the Selective Training and Service Act.

22. If you find that the Defendant at the time of his classification customarily preached and taught the principles of the beliefs of Jehovah's Witnesses and that the Defendant was a member of Jehovah's Witnesses and that the organization of the Jehovah's Witnesses recognized the Defendant as a minister and that from the facts presented to the local board reasonable men could not have found otherwise, you will find the Defendant Not Guilty.

23. The Court and the Jury may take judicial notice of the Selective Training and Service Act and of the Rules and Regulations thereunder, issued by the President of the United States and the Director of the Selective Training and Service System; that the Director thereof, Lewis B. Hershey, issued the following regulation pertaining to the ministerial status of Jehovah's Witnesses.

The regulation is as follows: (the regulation is attached hereto and marked Exhibit "A")

The regulation has the full effect of law and was and is binding upon the local draft boards and appeals boards of the Selective Training and Service System.

24. You are instructed that Paragraph 626.1(a) of the Regulations promulgated pursuant to the Selective Training and Service Act of 1940, reads as follows:

"Classification not permanent. (a) No classification is permanent."

25. You are instructed that Paragraph 626.2(a) of the Regulations promulgated pursuant to the Selective [13] Training and Service Act of 1940, reads as follows:

"(a) The local board may reopen and consider anew the classification of a registrant (1) upon the written request of the registrant, the government appeal agent, any person who claims to be a dependent of the registrant, or any interested party in a case involving occupational deferment, if such request is accompanied by written information presenting facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification: or (2) upon its own motion if such action is based upon facts not considered when the registrant was classified which, if true, would justify a change in the registrant's classification; provided, in either event, the classification of a registrant shall not be reopened after the local board has mailed to such

registrant an Order to Report for Induction (Form 150) unless the local board first specifically finds there has been a change in the registrant's status resulting from circumstances over which the registrant had no control."

26. You are instructed that Paragraph 626.3 of the Regulations promulgated pursuant to the Selective Training and Service Act of 1940, reads as follows:

"Refusal to reopen and consider anew registrant's classification. When a registrant, any person who claims to be a dependent of a registrant, any interested party in a case involving occupational deferment, or the government appeal agent files with the local board a written request to reopen and consider anew the registrant's classification and the local board is of the opinion that the information accompanying such re- [14] quest fails to present any facts in addition to those considered when the registrant was classified, or, even if new facts are presented, the local board if of the opinion that such facts, if true, would not justify a change in such registrant's classification. In such a case, the local board, by letter, should advise the person filing the request that the information submitted does not warrant the reopening of the registrant's classification and should place a copy of the letter in the registrant's file. No other record of the receipt of such a request and the action taken thereon is required."

27. You are instructed that Paragraph 626.11 of the Regulations promulgated pursuant to the

Selective Training And Service Act of 1940, reads as follows:

“When Classification reopened, it shall be considered anew. When the local board reopens the registrant’s classification, it shall consider the new information which it has received and shall again classify the registrant in the same manner as if he had never before been classified, provided that if he has been physically examined, the examining physician’s Report of Physical Examination and Induction (Form 221), already in his file, shall be used to determine whether he has any defect set forth in Part I or Part II of the List of Defects (Form 220) when such fact is necessary in order to complete his classification. Such classification shall be and have the effect of a new and original classification even though the registrant is again placed in the class that he was in before his classification was reopened.”

28. You are instructed that Paragraph 626.12 of the Regulations [15] promulgated pursuant to the Selective Training and Service Act of 1940, reads as follows:

“Notice of action when classification considered anew. When the local board reopens the registrant’s classification, it, as soon as practicable after it again classifies the registrant, shall mail notice thereof on the Notice of Classification (Form 57) to the registrant and on Classification Advice (Form 59) to the person entitled to receive such notice or advice on an original classification under the provisions of section 623.61.”

29. You are instructed that Paragraph 626.13 of the Regulations promulgated pursuant to the Selective Training and Service Act of 1940, reads as follows:

“Right of appeal following reopening of classification. Each such classification shall be followed by the same right of appearance before the local board and the same right of appeal as in the case of an original classification.”

30. You are instructed that Paragraph 642.3 of the Regulations promulgated pursuant to the Selective Training and Service Act of 1940, reads as follows:

“Disposition of delinquencies. If a suspected delinquent has been located as a result of the local board’s efforts under section 242.2 or a suspected delinquent has reported voluntarily to a local board, the local board shall carefully investigate the delinquency. If the board finds that the suspected delinquent is innocent of any wrongful intent, the local board shall proceed to consider his case just as if he were never suspected of being a delinquent. The local board shall report its decision to the State Director of Selective [16] Service and shall note its decision in its records.”

The following are instructions 3 to 7 inclusive, given by the Court as requested by the prosecution, and duly excepted to by the Defendant:

3. It is beyond your province to inquire into the policy of the law. It is also beyond your province to determine whether the law should have excluded persons other than those it does exclude

from its provisions. The only question you are called to determine is whether the law has been violated knowingly and willfully.

4. The President is authorized to select and induct into the armed forces of the United States for training and service those registrants who have been selected in an impartial manner under such rules and regulations as the President may prescribe.

At all times mentioned in the indictment the Selective Training and Service Act of 1940, among other things, required the registration of every male person residing in the United States between the ages of 21 and 35, inclusive, and likewise provided that a limited class of human beings should be subject to Selective Service, namely, with few exceptions, the class of male humans residing within the United States between the ages of 20 and 44, inclusive.

The Act further authorizes the President to prescribe the necessary rules and regulations to carry out the Act, and to establish Selective Service civilian boards, including Local Boards and Appeal Boards. The Local Boards under the terms of the Act, have power to hear and determine all questions or claims with respect to induction in or exemption or deferment from training and service, and the decision of such local boards are final except [17] where an appeal is authorized in accordance with such rules and regulations as the President may prescribe. Various classifications for exceptions, exemptions, and defer-

ments are set up in the Act. It is provided that any person who is, by reason of religious training and belief, conscientiously opposed to participation in war of any form, shall not be required to be subject to combatant training and service, and if classified as such a "conscientious objector" he shall be assigned to noncombatant service.

It is further provided in the Act that if any person is conscientiously opposed to participation in war in any form and is also conscientiously opposed to participation in noncombatant service, and if he is so classified by a local board, then he shall be assigned to work of national importance under civilian direction, in lieu of induction into the armed forces for either combatant or noncombatant service.

If any registrant is dissatisfied with his classification by his local board, or if his claim for exemption from combatant or noncombatant service is denied by such local board, then he may appeal to his appropriate appeal board.

5. You are not sitting as a court of appeal to determine whether the local board or the appeal board was right in its determination of the classification of the defendant. The actions of the local board and the appeal board were gone into merely for the purpose of showing what opportunity was afforded to the defendant to present his proof for the classification he claimed. So that from it and all the remainder of the evidence in the case, you may determine whether there was a refusal or neglect on the part of the defendant to do what

the law required of him [18] and whether if you find beyond a reasonable doubt that there was such refusal or neglect, the defendant did so refuse or neglect knowingly and wilfully as these words have been defined by us.

6. In other words, what you are required to determine beyond a reasonable doubt, and it is your exclusive province to determine, is whether or not the defendant after registering and being classified IV-E, Conscientious Objector, by his local board and after being assigned to report for work of national importance, did knowingly fail to respond to the board's order to report for work of national importance. In determining this you may consider any matters in the record other than those mentioned which might indicate to you the lack of intent on the part of the defendant to disregard the board's order.

7. This is an offense requiring a specific intent. When this is the case, the intent must be shown to exist beyond a reasonable doubt. The intent may be shown by the acts and declarations of the defendant and by the circumstances surrounding his actions. They must, when taken together, prove the specific intent which, in this case, is to knowingly fail or neglect to submit to induction when notified to do so.

As bearing upon the question of the intent of the defendant he has testified to his reasons for his actions. You are to consider them in that connection only. However, if you are convinced beyond a reasonable doubt that the defendant did

in fact fail to submit to induction and that in so doing, he acted wilfully and with the knowledge that he was refusing to obey an act which he was required by law to perform, then his belief that his actions, if any, may have been justified by his religious beliefs is immaterial. [19] Religious belief does not excuse a violation of the law, if it be shown beyond a reasonable doubt that such violation of law actually occurred, and was wilful.

And it is for you to determine, in the light of all the evidence in the case, whether such wilful violation has occurred.

The foregoing Bill of Exceptions was prepared within the time allowed by law, as extended, and correctly sets forth the proceedings and evidence in connection with said trial and therefore settled, allowed and approved.

Dated this 13th day of July, 1943.

LEON R. YANKWICH

Judge of the District Court

[20]

[Title of District Court and Cause.]

STIPULATION

It is hereby stipulated that the foregoing Bill of Exceptions is correct and may be allowed. That a copy of the same was received.

Dated: July 12 1943.

CHARLES H. CARR

United States Attorney

By BETTY MARSHALL GRAY-
DON

Assistant United States
Attorney

Acknowledgment of service of copy of within Bill of Exceptions. Dated: July 12, 1943.

BETTY MARSHALL
GRAYDON

Asst. U. S. Attorney

[Endorsed]: Filed July 13, 1943.

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Appellant in the above entitled action assigns as error the following:

(2) The refusal to permit any inquiry into whether defendant had a fair hearing.

(3) The striking out of the question and answer asked Victor Ochsner in regard to the statements made by M. B. Wellington, chairman of the Local Draft Board.

(4) The refusal to permit questions to be asked Richard Ochsner in regard to statements made by M. B. Wellington about his attitude towards Jehovah's Witnesses after an offer of proof by A. L. Wirin.

(5) The sustaining of an objection of an offer of proof that Floyd Bumphry would testify that Mr. Rodieck, a member of the Draft Board, expressed himself as hostile and antagonistic towards Jehovah's Witnesses.

(6) The giving of instructions by the Court that the decisions of the Local Board are final.

(7) Giving of instructions by the Court that the jury could not determine whether the Local Board or the Appeal Board was right in its determination of the classification of defendant.

(8) The giving of instructions 3, 4, 5, 6, and 7 requested by the prosecution.

(9) The refusal to give instructions 7 to 30 inclusive requested by the defendant.

(10) The judgment of conviction violates the rights of the defendant to freedom of religion.

Dated this 12 day of July, 1943.

A. L. WIRIN

Attorney for Defendant.

Received copy of the within Assignment of Errors: July 12, 1943.

BETTY MARSHALL

GRAYDON

Asst. U. S. Attorney

[Endorsed]: Filed July 13, 1943.

[Endorsed]: No. 10393. United States Circuit Court of Appeals for the Ninth Circuit. Kenneth Benjamin Edwards, Appellant, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed July 26, 1943.

PAUL P. O'BRIEN

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 10393

KENNETH BENJAMIN EDWARDS,
Appellant,
vs.

UNITED STATES OF AMERICA,
Appellee.

STATEMENT OF POINTS UPON WHICH
PETITIONER INTENDS TO RELY ON
APPEAL

Petitioner hereby adopts as his point on appeal the assignments of error included in the petition for review within the transcript of record.

A. L. WIRIN
Attorney for Appellant.

[Title of Circuit Court of Appeals and Cause.]

DESCRIPTION OF PARTS OF RECORD TO
BE PRINTED

The petitioner hereby designates for printing the entire transcript of record.

Dated at Los Angeles, California, July 29, 1943.

A. L. WIRIN
Attorney for Appellant

(Affidavit of Service by Mail to Betty Marshall Graydon, Asst. U. S. Atty. by copy being placed in mail Aug. 2, 1943 by A. L. Wirin.)

[Endorsed]: Filed Aug. 10, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STIPULATION RE NON PRINTING OF
EXHIBITS

It is stipulated that the exhibits in the above entitled case on appeal may be filed with the clerk of this Court, and need not be printed.

A. L. WIRIN

Attorney for Appellant

CHARLES H. CARR

United States Attorney

BETTY MARSHALL

GRAYDON

By BETTY MARSHALL

GRAYDON

Assistant United States

Attorney

So Ordered:

FRANCIS A. GARRECHT ^{fl}

United States Circuit Judge

[Endorsed: Filed Sept. 7, 1943. Paul P. O'Brien, Clerk.]

